

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE CONTINENTAL INSURANCE COMPANY,) Case No. 08-2052 SC
)
Plaintiff,) Related cases:
) 07-5800 SC
) 07-6045 SC
v.) 08-2268 SC
) 08-5096 SC
JOHN JOSEPH COTA; REGAL STONE) 08-5098 SC
LIMITED, FLEET MANAGEMENT, LTD.;) 09-1469 SC
and the M/V COSCO BUSAN, LR/IMO)
Ship No. 9231743, her engines,) ORDER RE:
apparel, electronics, tackle,) APPLICABILITY OF
boats, appurtenances, etc., in rem,) SECTION 1198
)
Defendants.)
_____)
REGAL STONE LIMITED and FLEET)
MANAGEMENT, LTD.,)
)
Counterclaimants,)
)
v.)
)
THE CONTINENTAL INSURANCE COMPANY,)
)
Counterdefendant.)
_____)
REGAL STONE LIMITED and FLEET)
MANAGEMENT, LTD.,)
)
Cross-Complainants,)
)
v.)
)
JOHN JOSEPH COTA,)
)
Cross-Defendant.)
_____)

1 REGAL STONE LIMITED and FLEET)
 2 MANAGEMENT, LTD.,)

3 Third-Party Plaintiffs,)

4 v.)

5 THE SAN FRANCISCO BAR PILOTS and)
 6 THE SAN FRANCISCO BAR PILOTS)
 7 BENEVOLENT AND PROTECTIVE)
 8 ASSOCIATION,)

Third-Party Defendants.)

9 **I. INTRODUCTION**

10 On September 21, 2009, the Court ordered supplemental
 11 briefing on the question of whether California Harbors and
 12 Navigation Code section 1198 ("section 1198") applies to
 13 Defendants, Counterclaimants, and Cross-Defendants Regal Stone
 14 Limited ("Regal Stone") and Fleet Management, Ltd., ("Fleet").
 15 Docket No. 157 ("Order Requiring Supplemental Briefing").
 16 Plaintiff and Counterdefendant Continental Insurance Company
 17 ("Continental") and Cross-Defendant John Joseph Cota ("Cota")
 18 filed supplemental briefs. Docket Nos. 122 ("Continental's
 19 Supplemental Br."), 126 ("Cota's Supplemental Br."). The San
 20 Francisco Bar Pilots ("Bar Pilots") joined and adopted the
 21 supplemental briefs of Continental and Cota. Docket No. 127
 22 ("Joinder"). Regal Stone and Fleet filed an Opposition. Docket
 23 No. 130 ("Opp'n"). Continental and Cota submitted Replies.
 24 Docket Nos. 139 ("Continental's Reply"), 140 ("Cota's Reply").
 25 For the reasons stated herein, the Court finds that section 1198
 26 applies to Regal Stone and Fleet.

1 **II. BACKGROUND**

2 Continental and Cota moved for partial summary judgment on
3 the question of whether section 1198 is preempted by federal
4 maritime law. Docket Nos. 90 ("Continental's MPSJ"), 93 ("Cota's
5 MPSJ"). In response, Regal Stone and Fleet contend that section
6 1198 does not apply to them because the time charterer hired the
7 pilot. Opp'n at 9-15. The Court ordered supplemental briefing
8 related to this contention. Docket No. 128 ("Order").

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10 **III. LEGAL STANDARD**

11 Under California law, the objective of statutory
12 interpretation is to ascertain and effectuate legislative intent.
13 Burden v. Snowden, 2 Cal. 4th 556, 562 (1992). The court looks
14 first to the language of the statute, giving effect to its plain
15 meaning. Id. "[T]he objective sought to be achieved by a statute
16 as well as the evil to be prevented is of prime consideration in
17 its interpretation." Rock Creek Water Dist. v. Calaveras County,
18 29 Cal. 2d 7, 9 (1946).

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20 **IV. DISCUSSION**

21 **A. Statutory Framework**

22 Under California law, foreign vessels in the Bay of San
23 Francisco must use a pilot: "Every foreign vessel . . . [in] the
24 bay[] of San Francisco . . . shall use a pilot or inland pilot
25 holding a license issued pursuant to this division" Cal.
26 Harbors & Navigation Code § 1127(d). Section 1190 requires
27 "[e]very vessel" to pay a specified bar pilotage rate. Id.

§ 1190(a). "Vessels which use pilotage services . . . and their owners, operators, and agents are jointly and severally liable for pilotage fees" Id. § 1120.

Section 1198(c) begins by stating that:

Every vessel, owner, operator, or demise or bareboat charterer hiring a pilot with a state license for the Bays of San Francisco, San Pablo, and Suisun shall either defend, indemnify, and hold harmless pilots pursuant to paragraph (1), or alternatively, notify pilots of an intent to pay for trip insurance pursuant to paragraph (2).

Cal. Harbors & Navigation Code § 1198(c). Paragraph (1) states, in part, that:

A vessel subject to this paragraph and its owner, operator, and demise or bareboat charterer shall defend, indemnify, and hold harmless the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, with respect to liability arising from any claim, suit, or action, by whomsoever asserted, resulting in whole, or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

Id. § 1198(c)(1)(B). Paragraph 2 states, in part, that:

In lieu of paragraph (1), a vessel subject to this subdivision and its owner, operator, demise or bareboat charterer, and agent may elect to notify the pilot, or the organization of pilots to which the pilot belongs, of intent to pay for trip insurance

Id. § 1198(c)(2).

B. Legislative Intent

The legislative history indicates that the main purpose of section 1198 was to protect bar pilots, especially given that

1 pilotage is compulsory in the Bay of San Francisco. According to
2 Senator John Burton, the bill's sponsor,

3 SB 1109 would require that a vessel, its owners
4 and operators defend, indemnify, and hold
5 harmless a pilot from any liability and expenses
6 in connection with civil claims or actions
7 relating to the pilot's performance of pilotage.
8 . . . There is no adequate statutory provision
9 to protect a mandatory bar pilot's personal
10 assets, when he or she is sued for piloting a
11 vessel involved in an incident. It doesn't make
12 sense for the 63 San Francisco, San Pablo, and
13 Suisun bay bar pilots to purchase insurance.
14 Vessels are already insured against damages that
15 may occur during pilotage. The cost of bar
16 pilot insurance would be high and inevitably
17 passed on to the vessels. A liability
18 indemnification standard is needed to protect
19 the assets of the pilots of these bays.

20 Hampton Decl.¹ Ex. J ("SB 1109 (Burton) Statement").

21 Various organizations, including the Pacific Merchant
22 Shipping Association ("PMSA") objected to the proposed legislation
23 based on a concern that it would increase the liability exposure
24 of shipowners, charterers, and agents. See id. Ex. E ("PMSA
25 Letter"). The PMSA stated that "[t]he legislation will impose
26 liability upon parties such as time charters and 'managing agents'
27 who otherwise are not responsible for the consequences of a vessel
28 casualty." Id. In response to concerns of this kind, language
was added to the bill clarifying that only demise or bareboat
charterers had a duty to defend, indemnify and hold harmless
pilots. See id. Ex. H ("SB 1109"), Ex. I ("Assembly Republican
Bill Analysis") ("The August 18th amendments . . . narrow[] the

¹ Lisa Hampton, a Research Director of Legislative Research, Incorporated (LRI), filed a declaration in support of Regal Stone and Fleet's Opposition. Docket No. 134.

1 indemnification liability on certain types of charterers of
2 vessels.").

3 A time charter is a contract to use a ship for a specific
4 period of time in order to ship goods. Thomas J. Schoenbaum,
5 Admiralty and Maritime Law § 11-5 (4th ed. 2004). The owner
6 continues to operate the vessel, but makes the ship available to
7 the time charterer to ship cargo. Id. In contrast, a demise or
8 bareboat charter is essentially the lease of the ship to the
9 charterer, who mans, equips and maintains it. Id. § 11-3. It
10 makes sense for demise or bareboat charterers, but not time
11 charterers, to be required to indemnify pilots, because under a
12 demise or bareboat charter, the entire command and possession of
13 the vessel is turned over to the charterer, whereas under a time
14 charter, the owner continues to operate the vessel. See id.
15 §§ 11-3, 11-5.

16 Regal Stone and Fleet contend that section 1198 does not
17 apply when the time charter hires the pilot. Opp'n at 9-11.
18 However, the legislative history submitted to the Court does not
19 evidence any intent to absolve the owner or operator of their
20 requirement to defend, indemnify and hold harmless pilots in a
21 situation where the time charterer or its agent places the call
22 ordering the pilot for the vessel. Regal Stone and Fleet's
23 interpretation of section 1198 does not comport with the
24 legislature's intent to protect bar pilots. The Court will not
25 endorse an interpretation of the statute that allows shipowners
26 and operators to evade the requirements of section 1198 by having
27 time charterers place the order for pilotage services. Based on
28

1 both the plain language of the statute and the legislative
2 history, the Court interprets section 1198 as follows: When a
3 vessel, owner, operator, or demise or bareboat charterer hires a
4 pilot, then the vessel, owner, operator, or demise or bareboat
5 charterer must either notify the pilot of an intent to purchase
6 trip insurance, or defend, indemnify and hold harmless the pilot.

7 **C. The Vessel Hired Cota**

8 The facts of this case indicate that the vessel hired Cota.
9 According to Kevin Kennedy ("Kennedy"), one of the directors of
10 Regal Stone, Regal Stone became the owner of the COSCO BUSAN in
11 2007. Roberts Decl.² Ex. A ("Kennedy Dep. I") at 19:9-10; Ruby
12 Decl.³ Ex. E ("Kennedy Dep. II") at 12:21-23. Regal Stone has two
13 directors, no officers, and no employees. Kennedy Dep. I at
14 78:23-79:10. Regal Stone is a single-purpose company, and its
15 purpose is to own the COSCO BUSAN. Id. at 19:2-8.

16 Fleet operates the vessel for Regal Stone under a ship
17 management agreement. Id. at 21:4-9. The management agreement is
18 with Fleet Ship Management, Inc., which subcontracted operational
19 management of the COSCO BUSAN to Fleet. Roberts Decl. Ex. B
20 ("Fleet Dep.") at 103:5-104:23. Fleet was responsible for crew
21 management, technical management, making insurance arrangements,
22 and providing accounting services for the vessel. Id. at 33:6-

24 ² C. Kent Roberts, one of the attorneys for Defendant Cota in
25 this action, filed a declaration in support of Cota's Supplemental
Brief. Docket No. 128.

26 ³ Samuel H. Ruby, an attorney for Continental, filed a
27 declaration in support of Continental's Supplemental Brief. Docket
28 No. 124.

1 34:11; Kennedy Dep. II at 36:4-7. In a document provided by Fleet
2 to the masters of Fleet-operated vessels, it states: "When
3 visiting ports where pilotage is compulsory . . . the Master
4 shall employ a Pilot." Id. at 135:10-137:3, Ex. 137 ("Guidance to
5 Masters and Navigating Officers").

6 At the time of the allision, the vessel was under a time
7 charter to Hanjin Shipping Co. Ltd ("Hanjin"), and the vessel was
8 sailing in compulsory pilotage waters. Fleet Dep. at 95:21-24,
9 99:3-19, Ex. 139 ("Time Charter"); Puri Decl.⁴ ¶ 8. Hanjin was
10 required to pay for the pilot. Time Charter § 2. If the vessel
11 was operating in a port where pilotage is optional, Fleet would
12 have referred any queries from the master of the vessel concerning
13 whether a pilot should be taken to the time charterer, because the
14 time charterer pays for the pilot. Fleet Dep. at 117:22-119:15.
15 The shipowner remained responsible for the acts of pilots. Time
16 Charter § 26.

17 Hanjin contracted with Norton Lilly International ("Norton
18 Lilly") to provide agency services for Hanjin's time-chartered
19 vessels. Kyu-Sung Cho Decl.⁵ ¶ 3. Michael Masashi Kawamura
20 ("Kawamura"), an employee of Norton Lilly, was the person who made
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22
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24 ⁴ Vivek Puri, former Chief Technical Ships Officer of Synergy
25 Marine Ltd., filed a declaration in support of Regal Stone and
Fleet's Opposition. Docket No. 132.

26 ⁵ Kyu-Sung Cho, the Manager of Fuel Management for Hanjin,
27 filed a declaration in support of Regal Stone and Fleet's
Opposition. Docket No. 131.

1 the call ordering the pilot for the COSCO BUSAN. Ruby Decl.⁶ Ex.
2 A ("Kawamura Dep.") at 151:12-16. Kawamura worked in the vessel
3 operations department of Norton Lilly. Id. at 23:21-23.
4 Generally, after a ship emails its estimated arrival time,
5 Kawamura coordinates a pilot for the ship. Id. at 35:2-5, 37:7-
6 38:12; 143:10-11. It was part of Kawamura's job function to call
7 the pilots. Id. at 151:22. Kawamura was not aware of any other
8 agent doing anything for the COSCO BUSAN in November 2007. Id. at
9 146:5-9.

10 When a San Francisco bar pilot arrives on a vessel, he or she
11 gives the master of the vessel a bill for engagement of the pilot.
12 Roberts Decl. Ex. D ("Sullivan Dep.") at 32:14-33:4, Ex. 129
13 ("Bill"); Sullivan Decl.⁷ ¶¶ 2-4. The master signs the bill below
14 the block that states "TENDER OF SERVICE ADMITTED AND BILL
15 ACCEPTED BY MASTER OF VESSEL." See Bill. On November 7, 2007,
16 the master of the vessel signed the bill accepting Cota's
17 services. See Bill. Hanjin paid for the pilotage provided by
18 Cota. Cox Decl.⁸ Ex. B ("Sullivan Dep. II") at 35:2-24.

19 In summary, then, the vessel's master was required to employ
20 a pilot when entering and leaving the Bay of San Francisco. The
21 Time Charter holds the owner of the vessel responsible for the

22 ⁶ Samuel H. Ruby, an attorney for Continental, filed a
23 declaration in support of Continental's Supplemental Brief. Docket
24 No. 124.

25 ⁷ Werner R. Sullivan, Chief Dispatcher of the San Francisco
26 Pilots filed a declaration. Docket No. 141.

27 ⁸ John Cox, an attorney for Regal Stone and Fleet, filed a
28 declaration in support of Regal Stone and Fleet's Opposition.
Docket No. 133.

1 acts of pilots. An agent of the time charterer ordered the pilot,
2 which was part of his job function. When the pilot boarded the
3 COSCO BUSAN, the bill was accepted by the master of the vessel.
4 The time charterer paid the bill. Since the legislature expressed
5 no intent to absolve the vessel owner or operator of the
6 requirement to defend, indemnify, and hold harmless the pilot when
7 the vessel is under a time charter, the Court finds that the
8 vessel hired the pilot.⁹ As such, section 1198 applies to the
9 owner and operator of the vessel, Regal Stone and Fleet.

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24 ⁹ The Court finds that States Marine Corp. of Del. v. Victory
25 Carriers, Inc., 272 F.2d 463 (9th Cir. 1959) is not controlling
26 because whether the vessel hired the pilot turns on principles of
27 statutory interpretation, not principles of private contract law.
28 In Victory Carriers, the court held that a time charterer did not
have the authority to bind the vessel owner to the pilotage clause
of a towage contract. Id. at 467-68.

